



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

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MORTGAGE BROKER PRACTICES ACT

INTERPRETIVE STATEMENT-01-07

DATE: March 15, 2007

FROM: Deborah Bortner, Director, Division of Consumer Services

RE: Exemptions to the Mortgage Broker Practices Act, RCW 19.146.020

QUESTION PRESENTED:

Is a wholesale lender required to obtain a license under the Mortgage Broker Practices Act (MBPA), chapter 19.146 RCW, to make loans to Washington borrowers?

DISCUSSION: The Director finds that activities conducted by entities that identify themselves as wholesale lenders fall within the MBPA definition of mortgage broker under RCW 19.146.010(12). In order to avoid the licensing requirement of the MBPA, the wholesale lender must qualify for one or more of the MBPA exemptions (listed below).

CONCLUSION: A wholesale lender is exempt from the MBPA only if one or more of the exemptions allowed under RCW 19.146.020 apply to the wholesale lender.

Replaces: N/A

Prepared by: Cindy Fazio, Staff Attorney

STATUTES AND RULES RELIED UPON: Chapter 19.146 RCW and chapter 208-660 WAC

RCW 19.146.010(12) provides: (12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

RCW 19.146.020 provides: (1) Except as provided under subsections (2) through (4) of this section, the following are exempt from all provisions of this chapter:

(a)(i) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof; and

(ii) Subject to the director's written approval, the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank;

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(e) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

(f) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(g) Any mortgage broker approved and subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation;

(h) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1) (h); and

(i) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether

such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW [19.146.030](#)(1).

(2) Those persons and their loan originators otherwise exempt under subsection (1)(e), (g), or (4) of this section must comply with RCW [19.146.0201](#) through [19.146.080](#). For violations of RCW [19.146.0201](#) through [19.146.080](#), the director has authority to issue a cease and desist order as provided in RCW [19.146.220](#) and [19.146.227](#), to impose penalties as provided in RCW [19.146.220](#), and to obtain and review books and records that are relevant to any allegation of such a violation as provided in RCW [19.146.235](#).

(3) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter.

(4) The director may exempt an exclusive agent under subsection (1)(a) of this section provided that the affiliate in subsection (1)(a) of this section:

(a) Applies for and maintains a license as provided by subsection (3) of this section;

(b) Has on file with the director a binding written agreement under which the affiliate assumes responsibility for the exclusive agent's violations of this chapter or rules adopted under this chapter; and

(c) Maintains a bond or other security in an amount required by the director that runs to the benefit of the state and any person who suffers loss by reason of the exclusive agent's violation of this chapter or rules adopted under this chapter.